IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3339 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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S R SREENIVASA - Petitioner
Versus
GUJARAT AGRO INDUSTRIES CORPORATION LIMITED - Respondent

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Appearance :
MR PV NANAVATI for Petitioner.
MS PJ DAVAWALA for Respondent.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 23/12/2005

ORAL JUDGMENT

1.The petitioner has filed this petition under Article 226 of the Constitution of India seeking declaration from this Court to the effect that the petitioner is no longer in service of the respondent - Corporation from 15.05.1994 or such other date as may deem necessary in the facts and circumstances of the case. The petitioner has also prayed for quashing and setting aside the office order passed by Managing Director Smt. Gauri Kumar on 18.03.1999 to hold inquiry against the petitioner and appointing Shri Shrikant Vadhera as Inquiry Officer and Mr. P.S. Parajia, Divisional Manager, Energy Division as Presenting Officer and seeking restraint order against the respondent – Corporation from holding any disciplinary inquiry and/or proceeding vide Charge-sheet No. EST/PES/123/1391 dated 01.01.1999 against the

petitioner.

2.This Court has issued notice on 18.06.1999 and granted ad-interim relief in terms of para 21 (C). The petition was thereafter admitted on 20.07.1999 and interim relief granted earlier was made absolute till final disposal of the petition.

3.It is the case of the petitioner that he was appointed as General Manager, Agrochemicals Division, Gujarat Agro Industries Corporation Limited, Ahmedabad on 29.12.1986. The respondent – Corporation is a Gujarat Government Undertaking. The respondent is governed by the State Government as well as Central Government through its Directors. The capital investment is mainly made by both Gujarat Government and Central Government.

4.The petitioner vide letter dated 10.04.1994

submitted his resignation from service of the respondent – Corporation w.e.f. 15.05.1994. The petitioner also resigned by his letter dated 13.05.1994 as Director of Gujarat Insecticides Limited by addressing letter to its Chairman. The petitioner also resigned as Director from Agrocel Pesticides Limited by addressing letter to its Chairman. The Additional General Manager (P&A) of the respondent – Corporation by his letter with subject settlement of outstanding – Acceptance of resignation advised to return housing loan, vehicle loan and to settle account with respect to traveling allowance. The petitioner vide letter dated 11.05.1994 paid outstanding loan of Rs. 70,000/- towards vehicle loan and interest thereon by cheque. Loan taken from the Housing Development Finance Corporation was also settled. He also returned Rs. 19,983.23 by cheque towards travel advances and also returned all amenities in the nature of

telephone etc. to the respondent – Corporation. The petitioner thereafter joined service at Bangalore.

5.The Managing Director Mr. Varesh Sinha wrote a letter dated 26.04.1994 to the petitioner that Agro Group of Employees' Union has addressed a letter dated 22.04.1994 along with a copy of the statutory report prepared by Mr. R.L. Gupta, I/c. General Manager (P&A) and asked parawise comments thereon. The petitioner also in compliance with the said letter, on 26.04.1994 complied with the said letter by his parawise comments. The petitioner by his letter dated 09.05.1994 and 13.05.1994 addressed to Managing Director, supplied summary of comments on the Agalchem. He also gave parawise remarks to enclosures with letter of Managing Director. He also complied with his parawise remarks on report prepared by Mr. R.L. Gupta, I/c. General Manager (P&A).

6.It is stated that after gap of four years i.e. after the petitioner resigned from the service from May 1994, he received a letter dated 20.04.1998 from I/c. Divisional Manager (P&A) of the respondent – Corporation alleging that prima facie irregularities appeared to have been committed by the petitioner and further alleged that he has abandoned service on his own and required to give status report within 15 days from the date of the receipt of the letter. The petitioner replied by Registered Post A.D. letter to the allegations made in the said letter and thereby he refuted all allegations made therein. The respondent – Corporation served a Charge-sheet dated 01.01.1999 after a lapse of six months. The petitioner replied to the said charge-sheet by his letter dated 22.01.1999. The respondent – Corporation by his letter dated 18.03.1999 appointed Mr. Shrikant Vadhera as Inquiry

Officer to start inquiry from 15.04.1999.

7.Being aggrieved by the said action of the respondent – Corporation, the petitioner has filed this petition before this Court.

8.Mr. P.V. Nanavati, learned advocate appearing for the petitioner has submitted that the petitioner is no longer in service of the respondent – Corporation and the Corporation has not indicated anything that his resignation has not been accepted nor has written any letter that because of the allegations made by the Employee's Union, the respondent – Corporation wanted to take disciplinary proceedings against him. He has further submitted that since the petitioner was no longer in service of the Corporation, the respondent – Corporation has no right to hold inquiry. The action of the respondent – Corporation of tricking the petitioner as

having abandoned his service is a convenient mode to harass a person who has already left the service and has taken up another service for his livelihood and settled at another place which is far away from Ahmedabad and it is clear that the respondent – Corporation wanted to harass the petitioner by malafide motives by putting him into mental harassment and unnecessary financial loss by compelling him to travel to Ahmedabad. He has further submitted that there is no rule prescribed under the Service Rules whereby inquiry can be initiated against the petitioner after about four years from the date of tendering his resignation. Mr. Nanavati has, therefore, submitted that initiation of inquiry is bad and it requires to be quashed and set aside.

9. An affidavit-in-reply is filed on behalf of the respondent – Corporation. Ms. P.J. Davawala, learned advocate appearing for the respondent -

Corporation has submitted that in view of the complaint received from the Employee's Union, the respondent – Corporation was contemplating certain inquiry against the petitioner. She has further submitted that even if the petitioner is said to have resigned from the service then also if the employee who left the services is involved in financial irregularities then it is open for the employer to initiate departmental proceedings against the petitioner. She has further submitted that even though the petitioner has abandoned the service of the respondent – Corporation, he is still required to be considered as an employee for the purpose of departmental proceedings. If cause of action arises earlier, departmental proceedings can be initiated. She has further submitted that simply because the petitioner has cleared all dues does not mean that his resignation was accepted. The condition for acceptance of resignation and compliance

thereof would not mean that automatically the resignation would be deemed to have been accepted. She has further submitted that on going through the papers and other relevant documents, it was prima facie found that the petitioner has some involvement in the irregularity for which departmental inquiry was necessitated. She has, therefore, submitted that the respondent – Corporation should be given sufficient opportunity to prove the charge against the petitioner by placing on record service documents as well as other supported papers.

10.The petitioner has also filed affidavit-in-rejoinder denying the facts stated and averments made in the affidavit-in-reply filed by the respondent – Corporation.

11.After considering the pleadings made by the petitioner in the petition and also in the

affidavit-in-rejoinder and in the affidavit-in-reply by the respondent – Corporation, this Court has passed an order on 02.09.2005 directing the respondent – Corporation to produce relevant service rules under which an inquiry could be held against a person who claims to have resigned from the service of the Corporation. Thereafter, service rules were produced on record. After perusing the said service rules, this Court has expressed prima facie view by an order dated 07.10.2005 observing that the scheme of the rules does not envisage and empower the competent authority to hold the disciplinary inquiry against an employee who has resigned from service. The Court has also considered the submission made on behalf of the respondent – Corporation that the petitioner cannot be treated to have resigned from service because he has not produced No Due Certificate from the competent authority and left the service without proper

intimation. The Court has, however, not expressed any opinion on the statement made by Ms. P.J. Davawala and keeping in view the categorical assertion made by Shri Nanavati that his client is not desirous of lodging any claim on the Corporation in respect of any alleged financial benefits which may be due to him, the Court deemed it proper to adjourn the matter with the direction that Ms. Davawala should seek instructions from the Corporation on the desirability and justification of continuing with the inquiry. The Court has also expressed hope that the competent authority of the Corporation will take appropriate decision to bring an end to this shadow of legal battle.

12.Today when the matter is called out, Mr. Nanavati has produced a letter dated 10.10.2005 written by the petitioner to him wherein it is stated that if the respondent – Corporation is

willing to withdraw all charges leveled against him and is also willing not to proceed against him in any Court under any Law, the petitioner has permitted Mr. Nanavati to make a statement before this Court that the petitioner does not want to make any claim and will forgo all his consequential rights arising out of his resignation from the respondent – Corporation.

13.Mr. Nanavati has also produced another letter dated 26.10.2005 written by the petitioner to him.

14.When Ms. Davawala is asked about her response to the said statement as well as her response to the earlier order passed by this Court, Ms. Davawala has expressed her inability to make any statement in this regard. She is also unable to point out any rule to the effect that the scheme of the Rules either envisages or empowers the competent authority to hold the

disciplinary inquiry against the employee who has resigned from service. When there is no specific rule to this effect empowering the respondent – Corporation to initiate the inquiry after period of four years from the date of resignation of the petitioner, it is difficult to sustain such initiation of the inquiry proceedings against the petitioner. The issue regarding the resignation of the petitioner was not disputed at all by the respondent – Corporation all throughout. It is only when the present petition is filed, in an affidavit-in-reply the said dispute was raised. The Court, therefore, does not see any justification in the said dispute raised by the respondent - Corporation. The petitioner can certainly be considered as having been resigned from the respondent – Corporation as soon as he tendered his resignation and settled all his dues with the respondent – Corporation. Simply because the respondent – Corporation has not

issued No Due Certificate for the reasons best known to the respondent – Corporation, it cannot be said that the petitioner has not resigned from the respondent – Corporation. Neither any rule is pointed out to the Court justifying the initiation of inquiry proceedings nor any material is produced which would show that the respondent – Corporation is justified in initiating the said proceedings.

15.In the above view of the matter, the prayers made by the petitioner in this petition are granted subject to the clarification that the petitioner would not raise any claim against the respondent – Corporation as stated by him in his letter dated 10.10.2005. This statement, however, would not come in the way of the petitioner if the present order is not accepted by the respondent – Corporation and is taken in further proceedings and in case, the present order is reversed, in that case, it

would be open for the petitioner to raise all his demands to which he is entitled to.

16.With this direction and observation, this petition is accordingly disposed of. Rule is made absolute with no order as to costs.

[K.A. PUJ, J.]

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